

December 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40723
Conference Calendar

EDDIE CABELLO,

Plaintiff-Appellant,

versus

DOUGLAS LOWE, Criminal District Attorney; JANIE COCKRELL,
DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL
DIVISION; HEATHER SCHITOSKEY, Correctional Officer, Coffield
Unit; UNIDENTIFIED PETERSON, Warden, Sergeant, Coffield Unit,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:03-CV-89

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Eddie Cabello, Texas prisoner # 441345, appeals the district court's dismissal of his 42 U.S.C. § 1983 suit under 28 U.S.C. § 1915A(b)(1). He argues that the district court should have enjoined a pending state criminal prosecution of assault against him because the assault charge was brought in bad faith.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

A federal court may not interfere with a pending state criminal proceeding absent extraordinary circumstances. Younger v. Harris, 401 U.S. 37, 43, 53-54 (1971). Cabello has not shown such circumstances. See id.; Perez v. Ledesma, 401 U.S. 82, 85 (1971); Ballard v. Wilson, 856 F.2d 1568, 1570-71 (5th Cir. 1988).

Cabello's appeal lacks arguable merit and is DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of his district court complaint and of this appeal as frivolous each count as a "strike" for purposes of the three-strikes bar under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Cabello is warned that, should he accumulate three strikes, he will be barred from proceeding in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.